

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

NORMAN GERALD DANIELS, III,

Plaintiff,

v.

A. BAER, et al.,

Defendants.

No. 1:19-cv-01801 KES GSA (PC)

FINDINGS AND RECOMMENDATIONS

ORDER RECOMMENDING DISMISSAL  
FOR FAILURE TO OBEY COURT ORDER  
AND FOR FAILURE TO KEEP COURT  
APPRISED OF CURRENT ADDRESS

PARTIES' OBJECTIONS DUE IN  
FOURTEEN DAYS

Plaintiff, a former state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. On December 23, 2019, Defendants removed this matter to federal court. See ECF No. 1. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

For the reasons stated below, the undersigned will recommend that this matter be dismissed for Plaintiff's failure to keep the Court apprised of his current address and for his failure to obey a court order. The parties will be given fourteen days to file objections to this order.

I. RELEVANT PROCEDURAL HISTORY

A. Adoption of Dispositive Findings and Recommendations

On March 24, 2022, the undersigned screened Plaintiff's SAC and found that it failed to

1 state a claim upon which relief could be granted. ECF No. 53 at 11. As a result, it recommended  
2 that the matter be dismissed. Id.

3 On May 18, 2022, Plaintiff's objections to the findings and recommendations were  
4 docketed. ECF No. 58. Thereafter, on September 28, 2022, the District Judge who was assigned  
5 to the matter at the time adopted the findings and recommendations. ECF Nos. 59, 60 (order  
6 adopting and judgment).

7           B. Plaintiff's Appeal; Circuit's Affirmation In Part and Reversal In Part

8         In October of 2022, Plaintiff appealed the decision. See ECF Nos. 61, 62 (notice of  
9 appeal and appeal dated 10/25/22). A considerable amount of time later, on June 30, 2025, the  
10 Ninth Circuit issued its opinion which affirmed this Court's ruling in part and reversed and  
11 remanded in part. See ECF No. 68.

12           C. Order Regarding Current Address and Desire to Continue to Prosecute

13         Because almost three years had passed since Plaintiff filed his appeal in the Ninth Circuit,  
14 the Court ordered Plaintiff to: (1) file a notice of current address with the Court, and (2) inform  
15 the Court whether he still wished to prosecute this case. ECF No. 70 at 2. Plaintiff was given  
16 fourteen days to comply with the Court's order. Id.

17           D. Order Returned to Court Marked "Undeliverable, Paroled"

18         On August 7, 2025, the Court's July 24, 2025, order was returned to it marked  
19 "Undeliverable, Paroled." See 8/7/25 docket entry. More than forty-five days have passed and  
20 Plaintiff has neither filed a response to the Court's order, nor has he requested an extension of  
21 time to do so. Plaintiff has not responded to the Court's order in any way.

22           II. APPLICABLE LAW

23           A. Federal Rule of Civil Procedure 41(b) and Local Rules 110, 182(f) and 183(b)

24         Federal Rule of Civil Procedure 41 permits this Court to dismiss a matter if a plaintiff fails  
25 to prosecute or he fails to comply with a court order. See Fed. R. Civ. P. 41(b). Local Rule 110  
26 also permits the imposition of sanctions when a party fails to comply with a court order. L.R.  
27 110.

28         Local Rule 182(f) permits service to be effective service at a prior address if a party fails

1 to notify the Court and other parties of his address change. Id. Finally, Local Rule 183(b) gives a  
2 party who appears in propria persona a period of time to file a notice of change of address if some  
3 of his mail is returned to the Court. Id.

4       B. Malone Factors

5       The Ninth Circuit has clearly identified the factors to consider when dismissing a case for  
6 failure to comply with a court order. It writes:

7           A district court must weigh five factors in determining whether to dismiss a case  
8 for failure to comply with a court order: “(1) the public’s interest in expeditious  
9 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
10 prejudice to the defendants; (4) the public policy favoring disposition of cases on  
their merits; and (5) the availability of less drastic sanctions.”

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12       Malone v. United States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (quoting Thompson v.  
13 Hous. Auth. of City of Los Angeles, 782 F.2d 829 (9th Cir. 1986) (per curiam)).

14       III. DISCUSSION

15       A. Rule 41(b) and Local Rules 110, 182(f) and 183(b) Support Dismissal of This  
16           Case

17       Although the docket indicates that Plaintiff’s copy of the order which directed him to file  
18 a notice of current address and to inform the Court whether he wished to continue to prosecute  
19 this case was returned, Plaintiff was properly served. It is a plaintiff’s responsibility to keep a  
20 court apprised of his current address at all times. Pursuant to Local Rule 182(f), service of  
21 documents at the record address of the party is fully effective. The fact that Plaintiff failed to file  
22 a notice of change of address with the Court after he had been paroled, by itself, warrants the  
23 dismissal of this matter, in accord with Rule 41(b) and Local Rules 110 and 183(b).

24       B. Application of Malone Factors Supports the Dismissal of This Case

25           1. Expeditious Resolution of Litigation; Court’s Need to Manage Its Docket

26       Plaintiff has been given more than sufficient time to file a notice of change of address  
27 with the Court, as well as to inform it whether he wishes to continue to prosecute this case. Yet,  
28 he has failed to do either, nor has he contacted the Court to provide an exceptional reason for not

1 having done so.

2       The Eastern District Court has an unusually large caseload.<sup>1</sup> “[T]he goal of fairly  
 3 dispensing justice . . . is compromised when the Court is forced to devote its limited resources to  
 4 the processing of frivolous and repetitious requests.” Whitaker v. Superior Court of San  
 5 Francisco, 514 U.S. 208, 210 (1994) (brackets added) (citation omitted). Thus, it follows that  
 6 keeping this case on the Court’s docket when: (1) after almost three years since Plaintiff’s last  
 7 contact with the Court *and* after being paroled, Plaintiff has not made an independent effort to file  
 8 a notice of current address with the Court, and (2) Plaintiff has not informed the Court and  
 9 Defendants whether he wishes to continue to prosecute this case, such is not a good use of the  
 10 Court’s already taxed resources. Indeed, keeping this matter on the Court’s docket would stall a  
 11 quicker disposition of this case. Additionally, in fairness to the many other litigants who  
 12 currently have cases before the Court, no additional time should be spent on this matter.

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14           2. Risk of Prejudice to Defendants

15       Furthermore, for the past five years and nine months, it is indisputable that Defendants  
 16 have spent time and resources defending against this matter. They were brought into this matter  
 17 by Plaintiff. Requiring them to remain in it and wait for Plaintiff to inform them where he is  
 18 located, or requiring Defendants to file a response to any order the Court may issue in response to  
 19 the Ninth Circuit’s remand would not serve the interests of judicial economy. As a result, there  
 20 will be no prejudice to anyone other than Plaintiff should the matter is dismissed. On the  
 21 contrary, dismissal will benefit Defendants because they will not have to continue to defend  
 22 themselves against Plaintiff’s complaint.

23           3. Availability of Less Drastic Sanctions; Favored Disposition of Cases on

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25       <sup>1</sup> The Eastern District of California carries one of the largest and most heavily weighted  
 26 caseloads in the nation. See Office of the Clerk, United States District Court, Eastern District of  
 27 California, 2024 Annual Report, “Weighted Filings,” p. 35 (2024) (“[O]ur weighted caseload far  
 28 exceeds the national average . . . ranking us fourth in the nation and first in the Ninth Circuit.”).  
 This problem is compounded by a shortage of jurists to review its pending matters. See generally  
id. (stating 2024 Biennial Judgeship Survey recommended request for four additional permanent  
 judgeships for Eastern District of California).

1                   Merits

2                 Finally, given that Plaintiff has had sufficient time under the Local Rules – i.e., much  
 3 more than thirty days<sup>2</sup> – to file a change of address with the Court, nor having informed the Court  
 4 of whether he wishes to continue to prosecute this case, there is no less drastic option than  
 5 dismissal. Although the disposition of cases on their merits is preferred, this matter cannot be  
 6 prosecuted without a current address for Plaintiff and without participation in this case by him,  
 7 nor can it be disposed of on its merits.

8                   **IV. CONCLUSION**

9                 For these reasons, consistent with Federal Rule of Civil Procedure 41(b) and Local Rules  
 10 110, 182(f) and 183(b), and having considered the Malone factors, the undersigned recommends  
 11 that this matter be dismissed without prejudice for failure to obey a court order and for Plaintiff's  
 12 failure to keep the Court apprised of his current address. Despite the fact that Plaintiff cannot be  
 13 located, a period of fourteen days will be given for him to file objections to this order. However,  
 14 should this order be returned to the Court marked undeliverable before the end of the fourteen-  
 15 day period, the District Judge assigned to this action will likely dismiss this case immediately.

16                 Accordingly, IT IS HEREBY RECOMMENDED that:

17                 1. This matter be DISMISSED without prejudice for Plaintiff's failure to obey a court  
 18 order and for his failure to keep the Court apprised of his current address. See Fed. R. Civ. P.  
 19 41(b); Local Rule 110, and 183(b).

20                 2. The Clerk of Court be directed to CLOSE this case.

21                 These findings and recommendations are submitted to the United States District Judge  
 22 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
 23 after being served with these findings and recommendations, any party may file written  
 24 objections with the Court. Such a document should be captioned “Objections to Magistrate  
 25 Judge's Findings and Recommendations,” and it shall not exceed fifteen pages.

26                 The Court will not consider exhibits attached to the objections. To the extent that a party

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27                 2 In 2025, the period that a litigant appearing in propria person has to file a notice of change of  
 28 address was reduced from sixty-three days to thirty days. See Local Rule 183(b).

1 wishes to refer to any exhibit, when possible, the party must reference the exhibit in the record by  
2 its CM/ECF document and page number or reference the exhibit with specificity. Any pages filed  
3 in excess of the fifteen-page limit may be disregarded by the District Judge when conducting the  
4 28 U.S.C. § 636(b)(1)(C) review of the findings and recommendations. A party's failure to file  
5 objections within the specified time may result in the waiver of certain rights on appeal. See  
6 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014); Martinez v. Ylst, 951 F.2d 1153 (9th  
7 Cir. 1991).

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10 IT IS SO ORDERED.

11 Dated: September 25, 2025

12 /s/ Gary S. Austin  
13 UNITED STATES MAGISTRATE JUDGE  
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